

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
ANGELO GUTIERREZ AND RUTH GUTIERREZ	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and	:	
New York City Personal Income Tax under Chapter 46, Title T of the Administrative Code of the City of New York for the Years 1981, 1982 and 1983.	:	

---

Petitioners, Angelo Gutierrez and Ruth Gutierrez, 83-65 116th Street, Kew Gardens, New York 11418, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1981, 1982 and 1983 (File Nos. 802990 and 802991).

On April 29, 1987, petitioners waived a hearing and submitted the matter for determination based upon the Division of Taxation file, as well as a brief and additional documents to be submitted by July 8, 1987. After due consideration of the record, Daniel J. Ranalli, Administrative Law Judge, hereby renders the following determination.

ISSUE

Whether petitioners are properly entitled to schedule C expenses and certain itemized deductions for the years 1981, 1982 and 1983.

FINDINGS OF FACT

1. Petitioners, Angelo Gutierrez and Ruth Gutierrez, late filed a New York State and City of New York Resident Income Tax Return for each of the years 1981, 1982 and 1983. On each return Mr. Gutierrez reported his occupation to be "construction" and Mrs. Gutierrez reported her

occupation to be language specialist. Their filing status on each return was reported as "Married filing separately on one return."

2. For each taxable year at issue Mr. Gutierrez reported a net loss from his business activities variously described on his Federal schedules C as "Construction Engineer" (1981) and "Consulting Engineer" (1982 and 1983). His personal residence was reported as his business address on said schedules.

3. For 1981 Mrs. Gutierrez reported a net loss from her business activities described on her 1981 Federal Schedule C as "Travel Agent". Her personal residence was reported as her business address on said schedule. She reported no business income or loss for 1982 and 1983.

4. For 1981, Mr. Gutierrez reported a business loss of \$5,170.00. A Schedule C, Federal Form 1040, which was attached to the return, reported the following income and expenses:

Gross Receipts  
\$2,550.00

Deductions

Professional meeting expense	\$1,568.00
Telephone - inside and outside	600.00
Car/Cab fares	420.00
Photography	311.00
Supplies, calculator, brief case	326.00
Travel (7,500 miles @ 20¢ per mile)	1,500.00
Reference Books	645.00
Tolls	460.00
Survey of bridges	<u>\$1,890.00</u>
Total Deductions	<u>\$7,720.00</u>
Net Loss	<u>(\$5,170.00)</u>

5. For 1981, Mrs. Gutierrez reported a business loss of \$525.00. A Schedule C, Federal Form 1040, which was attached to the return, reported the following income and expenses:

Gross Receipts \$175.00

Deductions

"Travel-Delivery of" \$700.00  
Net Loss ( \$525.00)

6. For 1982, Mr. Gutierrez reported a business loss of \$2,741.00. A Schedule C, Federal Form 1040, which was attached to the return, reported the following income and expenses:

Gross Receipts

NY Telephone Co.	\$2,241.00
Misc. Consulting	<u>\$1,650.00</u>

Total Gross Receipts	\$3,891.00
----------------------	------------

Deductions

Car and Truck Expenses	\$1,300.00	
Office Supplies and Postage	\$ 195.00	
Rent on Business Property	\$ 900.00	
License	\$ 120.00	
Prof Meeting Expense	\$1,342.00	
Telephone - inside & outside	\$ 480.00	
Local Fares	\$ 360.00	
Reference	\$ 545.00	
Tolls	\$ 390.00	
Portion of Research Trip on Design of Bridges & Buildings	<u>\$1,000.00</u>	
Total Deductions		<u>\$6,632.00</u>
Net Loss	<u>( \$2,741.00)</u>	

7. For 1983, Mr. Gutierrez reported a business loss of \$4,340.00. A Schedule C, Federal Form 1040, which was attached to the return, reported the following income and expenses:

Gross Receipts

Miscellaneous Consulting	\$2,430.00
--------------------------	------------

Deductions

Car and Truck Expenses	\$1,300.00	
Rent on Business Property	\$ 900.00	
Professional Meeting Expenses	\$1,246.00	
Telephone - inside & out	\$ 510.00	
Car/Cab Fares	\$ 390.00	
Tolls	\$ 440.00	
Reference Books	\$ 620.00	
Travel (6000 miles @ 20¢ per mile)	\$1,200.00	
Supplies	\$ 164.00	
Total Deductions		<u>\$6,770.00</u>
Net Loss	<u>( \$4,340.00)</u>	

8. In addition to the purported business endeavors detailed above, each petitioner earned salary income during each year at issue from the City of New York, Board of Higher Education as follows:

	<u>ANGELO GUTIERREZ</u>	<u>RUTH GUTIERREZ</u>
1981	\$28,499.10	\$19,393.69

1982	\$21,584.31	\$30,133.07
1983	\$40,068.48	\$33,530.36

9. On August 5, 1985, the Audit Division issued a Statement of Audit Changes to petitioners for each year at issue whereon the following adjustments were made based on petitioners' failure to submit requested information and substantiation:

	<u>1981</u>	
Per <u>Return</u>	Per <u>Audit</u>	<u>Adjustment</u>
Net Business Income or (Loss)(H) \$7,720.00	\$(5,170.00)	\$2,550.00
Net Business Income or (Loss)(W) \$ 700.00	\$ (525.00)	\$ 175.00
Miscellaneous Deductions \$6,196.00	\$ 6,196.00	-0-
Statutory Medical Adjustment \$ 253.00		
Total Adjustment \$14,869.00		

	<u>1982</u>	
Per <u>Return</u>	Per <u>Audit</u>	<u>Adjustment</u>
Net Business Income or (Loss)(H) \$ 6,632.00	\$(2,741.00)	\$3,891.00
Employee Business Expense (W) \$ 730.00	\$ 730.00	-0-
Medical & Dental Expense \$ 4,270.00	\$ 4,270.00	-0-
Miscellaneous Deductions \$ 7,160.00	\$ 7,160.00	-0-
Mortgage Recording Tax Deduction \$ 725.00		
Total Adjustment \$19,517.00		

	<u>1983</u>	
Per <u>Return</u>	Per <u>Audit</u>	<u>Adjustment</u>
Net Business Income or (Loss) (H) \$ 6,770.00	\$(4,340.00)	\$2,430.00
Employee Business Expense (W) \$ 680.00	\$ 680.00	-0-
Miscellaneous Deductions \$ 3,663.00	\$ 3,663.00	-0-
Medical & Dental Expense \$ 2,479.00	\$ 2,479.00	-0-

Interest Expense	\$11,904.00	-0-
<u>\$11,904.00</u>		
Total Adjustment		
<u>\$25,496.00</u>		

---

10. Based on the aforesaid statements of audit changes, the Audit Division issued five notices of deficiency against petitioners on November 22, 1985 as follows:

(a) against Angelo and Ruth Gutierrez<sup>1</sup> asserting additional New York State and City personal income taxes for 1981 of \$1,325.00, plus penalty of \$66.25 and interest of \$592.68, for a total due of \$1,983.93;

(b) against Ruth Gutierrez asserting additional New York State and City personal income taxes for 1981 of \$698.00, plus penalty of \$34.90 and interest of \$312.23, for a total due of \$1,045.13;

(c) against Angelo and Ruth Gutierrez<sup>1</sup> asserting additional New York State and City personal income taxes for 1982 of \$1,344.00, plus penalty \$67.20 and interest of \$384.82, for a total due of \$1,796.02;

(d) against Ruth Gutierrez asserting additional New York State and City personal income taxes for 1982 of \$1,429.00, plus penalty of \$71.45 and interest of \$409.14, for a total due of \$1,909.59;

(e) against Angelo and Ruth Gutierrez asserting additional New York State and City personal income taxes for 1983 of \$3,550.00, plus penalty of \$177.50 and interest of \$617.02, for a total due of 4,344.52. 11. Petitioners submitted documentary evidence in the form of affidavits, receipts, bank statements, bank notes and other formal documents in substantiation of a portion of the deductions claimed on their respective Federal schedules C for the years at issue.

#### CONCLUSIONS OF LAW

---

<sup>1</sup>These two notices of deficiency were erroneously issued against both petitioners. The deficiencies asserted thereon are solely applicable to Mr. Gutierrez.

A. That petitioners have sustained their burden of proof to demonstrate that they were engaged in a trade or business during the years in issue (Tax Law § 689 [e]; Administrative Code § T46-189-0 [e]). Based on the documentation submitted, the following are determined to be ordinary and necessary expenses deductible under Internal Revenue Code §§ 162 and 212:

1981

Schedule C Expenses

Business cards & stationery	\$ 96.55
-----------------------------	----------

Miscellaneous Itemized Deductions

Union dues (Husband)	\$254.80
Union dues (Wife)	\$254.80
Total Substantiated Miscellaneous Deductions	\$509.60

1982

Schedule C Expenses

Engineering License Fee	\$120.00
-------------------------	----------

Miscellaneous Itemized Deductions

Manuals and publications	\$ 327.24
French language book	\$ 79.14
Tax Audit Representation	\$ 250.00
Union Dues (Husband)	\$ 270.02
Union Dues (Wife)	\$ 270.02
Total Substantiated Miscellaneous	\$1,196.42

Deductions

1983

Miscellaneous Itemized Deductions

Publications	\$ 228.95
Professional Fees	\$ 325.00
Union Dues (Husband)	\$ 287.40
Union Dues (Wife)	\$ 287.40
Total Substantiated Miscellaneous	\$1,128.75

Deductions

Interest Expense

Mortgage Interest \_\_\_\_\_

\$9,580.58

B. That petitioners have failed to sustain their burden of proof, imposed pursuant to Tax Law § 689(e) and section T46-189.0(e) of the Administrative Code of the City of New York to show that they are properly entitled to claim the deductions which herein remain disallowed.

C. That the two notices of deficiency issued against both Angelo and Ruth Gutierrez for 1981 and 1982, as discussed in Finding of Fact "10", footnote 1, are cancelled with respect to Ruth Gutierrez.

D. That the petition of Angelo Gutierrez and Ruth Gutierrez is granted to the extent indicated in Conclusions of Law "A" and "C"; that the Audit Division is directed to modify the notices of deficiency issued on November 22, 1985 accordingly; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
October 16, 1987

\_\_\_\_\_  
ADMINISTRATIVE LAW JUDGE